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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,009	07/14/2003	Claudiu D. Pruteanu	20020320.ORI	6036
23595	7590	01/25/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			ADAMS, GREGORY W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/619,009	PRUTEANU ET AL.	
	Examiner	Art Unit	
	Gregory W. Adams	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 December 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-19 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1-6 & 8-19 are rejected under 35 U.S.C. 102(B) as being anticipated by O'Daniel (US 5,123,801).

With respect to claim 1-3 & 9-11, O'Daniel discloses a storage receptacle 21, upward pivoting tailgate 23, pivoting loading hopper 79 and packing system 85, full height ejection panel 45, and hydraulic operating system to operate a tail gate assembly and pivoting hopper 79 wherein said loading hopper is mounted to rotate vertically (C4/L15-20).

With respect to claim 4 & 13, O'Daniel discloses a truck body generally in the shape of a stackable container 21.

With respect to claims 5-6 & 14, O'Daniel discloses a hopper 75 which provides sealing, e.g. sealing material from falling from a container 21.

With respect to claim 8, 12 & 15-19, O'Daniel discloses a loading hopper operating system for operating a loading hopper between a deployed position and a stowed position (C4/L15-20) comprising hydraulic cylinders 64, 87, 93.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Daniel (US 5,123,801) in view of Sjostedt (US 5,678,715). O'Daniel does not disclose lifting lugs. Referring to FIGS. 1-46 Sjostedt '715 discloses a truck body 10 (e.g. refuse vehicle) which assumes a shape of a stackable container (col. 1, Ins. 38-45), and further comprising lifting lugs 610, 674. Sjostedt '715 teaches that stackable truck body with lifting lugs fully utilizes ground or floor space when in storage, the stacking and lifting lugs capable of supporting loads created during stacking. Col. 1, Ins. 30-50. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the truck body of O'Daniel to assume a shape of a stackable container with lifting lugs, as per the teachings of Sjostedt, to utilize ground or floor space when in storage, the stacking and lifting lugs capable of supporting loads created during stacking.

3. Claims 1-6 & 8-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colin (US 4,406,573) (previously cited) in view of Oelberg (US 4,164,293) (previously cited).

With respect to claim 1-4 & 9-11, referring to FIGS. 1-13 Colin '573 discloses a rear-loading, rear discharging refuse truck body 2, 4 comprising a storage receptacle 2, tailgate assembly 4 carrying a loading hopper 7, 22, tailgate packing system 3, 4, 5, 7, a

truck body 2, 4 further comprising a full height ejection panel 3, 11, loading hopper 7, 22 mounted to rotate vertically on a truck body. Colin discloses a storage receptacle 2, upward pivoting tailgate 4, loading hopper 7, a packing system 11, and does not disclose a pivoting hopper. Oelberg discloses a pivoting hopper 29 that pivots into a body rear end. Oelberg discloses that adapting a refuse truck body to include a pivoting hopper broadens the ability of a refuse truck to collect a wider variety of refuse, e.g. bulk materials such as grain or leaves. C1; C1/L52-58.

With respect to claim 4 & 13, O'Daniel discloses a truck body generally in the shape of a stackable container 21.

With respect to claim 5 & 14, referring to FIGS. 1-13 Colin '573 discloses a loading hopper 7, 22 which provides sealing to a truck body. Col. 3, Ins. 1-10.

With respect to claim 6, referring to FIGS. 1-13 Colin '573 discloses a loading hopper 7, 22 which provides a sealing to a truck body. Col. 3, Ins. 1-10. It is noted that Colin discloses sealing to prevent material from anywhere but into a truck body.

With respect to claim 8, 12 & 15-19, O'Daniel discloses a loading hopper operating system for operating a loading hopper between a deployed position and a stowed position (C4/L15-20) comprising hydraulic cylinders 64, 87, 93.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colin (US 4,406,573) in view of Oelberg (US 4,164,293) and Sjostedt (US 5,678,715).

With respect to claims 4, 7 and 13, Colin does not disclose a stackable container with lifting lugs. Referring to FIGS. 1-46 Sjostedt '715 discloses a truck body 10 (e.g. refuse vehicle) which assumes a shape of a stackable container (col. 1, Ins. 38-45), and

further comprising lifting lugs 610, 674. Sjostedt '715 teaches that stackable truck body with lifting lugs fully utilizes ground or floor space when in storage, the stacking and lifting lugs capable of supporting loads created during stacking. C1/L30-50. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the truck body of Colin to assume a shape of a stackable container with lifting lugs, as per the teachings of Sjostedt, to utilize ground or floor space when in storage, the stacking and lifting lugs capable of supporting loads created during stacking.

Response to Arguments

Applicant's arguments and amendments filed December 19, 2005 have been fully considered and are persuasive. It is noted that claims 1 and 9 now recited a tailgate assembly comprising a pivoting hopper which has been addressed on the merits above.

Further, with respect to "stackable", Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, O'Daniel's and Colin's containers are capable of being stacked should one truck be stacked on top of another, or said containers removed and stacked on each other.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



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